

REMARKS/ARGUMENTS

Claims 1 to 5, 9 to 29, 62 to 70 and 72 are pending in this application. Claims 6 to 8, 30 to 61, 71 and 73 have been previously canceled. This amendment includes no new matter.

The Examiner rejects claims 1 to 5, 9 to 17, 19 to 29, 62 and 63 under 35 USC 103(a) as being obvious over Dutillio when taken with Sanders and in further view of Mohammed and in further view of Michael. The Examiner states that arguments against the references individually cannot show non-obviousness where the rejections are based upon a combination of the references, citing *In re Keller* 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir 1986). In addition, the Examiner indicates to applicant that KSR forecloses the argument that a specific teaching, suggestion, or motivation is required to support a finding of obviousness, pointing to the Board decision *Ex parte Smith*, (Bd. Pat. App. & Interf., June 25, 2007). Applicant traverses the rejection.

As quoted from *KSR* in *Ex parte Smith* at page 13, the question is “whether the improvement is more than the predictable use of prior art elements according to their established function.” Therefore, in addition to applicant’s previous arguments regarding non-obviousness of the rejected claims, the present invention is not obvious because of at least one advantageous characteristic of the claimed invention not particularized in the prior art references.

It has been determined that proteins produced in avian oviduct cells (i.e., tubular gland cells) are not fucosylated. See, for example, Table 2 at page 1162 of Zhu et al, *Nature Biotechnology* (2005) vol 23, p 1159-1169 (**Exhibit 1**). This lack of fucosylation in the oviduct cells of chickens is in contrast to what is seen in other cells of the chicken. See, for example, Graph A of Fig. 4 at page 483 of Raju et al (2000) vol 10, p 477-486 (**Exhibit 2**). This absence of fucose alters the therapeutic utility of monoclonal antibodies by increasing their potency. See, for example, the first column, last paragraph of page 102 of Etches, *Trends in Biotechnology* (2006) vol 24, p101-102 (**Exhibit 3**).

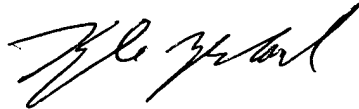
The feature that oviduct cells do not fucosylate proteins was not disclosed in the prior art references. Accordingly, the invention is more than the predictable use of prior

art elements according to their established function and as such the rejection should be withdrawn.

In conclusion, applicant submits that the claims 1 to 5, 9 to 29, 62 to 70 and 72 are allowable and respectfully requests the Examiner to pass the above-identified application to allowance.

If any issues remain to be addressed in this matter, which might be resolved by discussion, the Examiner is respectfully requested to call applicants' undersigned counsel at the number indicated below.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Kyle Yesland', is positioned above the printed name and address.

Kyle Yesland
Attorney for Applicants
Reg. No. 45,526
AviGenics, Inc.
Legal Department
111 Riverbend Road
Athens, Georgia 30605